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Attorneys for Plaintiff, Trustees of the
Operating Engineers Pension Trust

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TRUSTEES OF THE OPERATING
ENGINEERS PENSION TRUST,

Plaintiff,

vs.

K.C. EQUIPMENT, INC., a California
corporation, and DOES 1-10, inclusive,

Defendants.

Case No. 2:18-cv-9460

**COMPLAINT FOR PAYMENT OF
WITHDRAWAL LIABILITY**

[29 U.S.C. § 1451]

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1 Plaintiff, Trustees of the Operating Engineers Pension Trust, complains and
2 alleges:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction of this case pursuant to section 4301(c) of the
5 Employee Retirement Income Security Act of 1974 (“ERISA”) [29 U.S.C. § 1451(c)],
6 which grants the United States District Courts exclusive jurisdiction over civil actions
7 brought to enforce withdrawal liability obligations. Such jurisdiction exists without
8 respect to the amount in controversy.

9 2. Venue is conferred upon this Court by section 4301(d) of ERISA [29
10 U.S.C. § 1451(d)], which states that an action brought pursuant to section 4301 of
11 ERISA [29 U.S.C. § 1451] to enforce withdrawal liability obligation may be brought in
12 the district where the plan is administered or where a defendant resides or does
13 business. The plan on whose behalf the plaintiff brings this action is administered in
14 this district by an administrative corporation with its principal place of business located
15 in Los Angeles County, California. Jurisdiction and venue are properly grounded with
16 this Court.

17 **PARTIES**

18 3. Plaintiff is the board of trustees (“Trustees”) of the Operating Engineers
19 Pension Trust (“Trust”), an express trust created pursuant to a written declaration of
20 trust (“Trust Agreement”). The Trust Agreement is between the International Union of
21 Operating Engineers, Local Union No. 12 (“Local 12”), and various employer
22 associations in the construction industry in Southern California and Southern Nevada.
23 The Trust is now, and was at all times material to this action, an “employee pension
24 benefit plan” as defined in section 3(2) of ERISA [29 U.S.C. § 1002(2)], a
25 “multiemployer plan” as defined in sections 3(37) and 4001(a)(3) of ERISA [29 U.S.C.
26 §§ 1002(37), 1301(a)(3)], and a labor-management multiemployer trust created and
27 maintained pursuant to section 302(c)(5) of the Labor Management Relations Act of
28 1947 (“LMRA”) [29 U.S.C. § 186(c)(5)].

1 NLRA [29 U.S.C. § 152(2)], and was engaged in an industry affecting commerce within
2 the meaning of sections 3(11) and 3(12) of ERISA [29 U.S.C. §§ 1002(11), 1002(12)].

3 10. The Trustees are informed and believe, and thereon allege that on or about
4 July 1, 2016, K.C. Equipment effected a complete “withdrawal” from the Trust within
5 the meaning of section 4203(b)(2) of ERISA [29 U.S.C. § 1383(b)(2)].

6 11. The Trustees are informed and believe, and thereon allege that at all times
7 material herein K.C. Equipment and Does 1 through 10 have been trades or businesses
8 under common control, and are considered a “single employer” pursuant to section
9 4001(b)(1) of ERISA [29 U.S.C. § 1301(b)(1)]. As a “single employer,” K.C.
10 Equipment and Does 1 through 10 are jointly and severally liable for each other’s
11 withdrawal liability.

12 12. By letter dated May 1, 2018, the Trustees notified K.C. Equipment of the
13 \$47,658.59 assessment for withdrawal liability, owed by K.C. Equipment to the Trust
14 pursuant to sections 4201 *et seq.* of ERISA [29 U.S.C. §§ 1381 *et seq.*]. The assessment
15 of withdrawal liability demanded that K.C. Equipment either make a lump sum payment
16 of \$47,658.59, or pay that sum, plus interest, in 13 monthly installment payments.
17 These amounts were calculated in accordance with section 4211 of ERISA [29 U.S.C.
18 § 1391].

19 13. Any dispute concerning a determination of withdrawal liability must be
20 resolved through timely arbitration initiated under section 4221(a) of ERISA [29 U.S.C.
21 § 1401(a)]. As of the date of this complaint, K.C. Equipment and Does 1 through 10
22 have failed to timely initiate arbitration pursuant to section 4221(a) of ERISA [29
23 U.S.C. § 1401(a)]. By failing to timely initiate arbitration, K.C. Equipment and Does 1
24 through 10 waived any defenses or objections to the claim for withdrawal liability.

25 14. K.C. Equipment and Does 1 through 10 failed to pay the withdrawal
26 liability as a lump sum, and have failed to make any of the required monthly installment
27 payments. By letter dated July 24, 2018, the Trustees notified K.C. Equipment of its
28 failure to make any of the required monthly installment payments, and pursuant to

1 section 4219(c)(5)(A) of ERISA [29 U.S.C. § 1399(c)(5)(A)], demanded that K.C.
2 Equipment timely cure this failure. As of the date of this complaint, no payments have
3 been made by K.C. Equipment, or any other entity, and the period for cure has lapsed.
4 K.C. Equipment is in “default” as defined in section 4219(c)(5) of ERISA [29 U.S.C.
5 § 1399(c)(5)]. In the event of default, the Trustees may accelerate withdrawal liability
6 pursuant to section 4219(c)(5) of ERISA [29 U.S.C. § 1399(c)(5)], and demand the full
7 lump sum due. The Trustees seek judgment against K.C. Equipment and Does 1
8 through 10 for the entire amount of outstanding withdrawal liability due in the sum of
9 \$47,658.59.

10 15. Section 4301(a) of ERISA [29 U.S.C. § 1451(a)] authorizes the Trustees to
11 bring this legal action to collect the withdrawal liability owed by K.C. Equipment to the
12 Trust. Section 4301(b) of ERISA [29 U.S.C. § 1451(b)] states that if a legal action is
13 required to collect withdrawal liability, the liability shall be treated in the same manner
14 as a claim for delinquent contributions made pursuant to section 515 of ERISA [29
15 U.S.C. § 1145]. In any legal action brought to enforce section 515 of ERISA [29 U.S.C.
16 § 1145], the plan is entitled to collect the delinquent contributions, as well as liquidated
17 damages, interest, attorneys’ fees, and costs, pursuant to section 502(g)(2) of ERISA [29
18 U.S.C. § 1132(g)(2)]. Pursuant to section 502(g)(2) of ERISA [29 U.S.C.
19 § 1132(g)(2)], the Trust Agreement and the Agreement, the Trustees seek a judgment
20 including the withdrawal liability in the amount of \$47,658.59, plus liquidated damages,
21 interest, attorneys’ fees, and costs. Pursuant to section 502(g)(2)(E) of ERISA [29
22 U.S.C. § 1132(g)(2)(E)], the Court may also award the Trustees other appropriate legal
23 or equitable relief.

24 **PRAYER**

25 Based on the above allegations, the Trustees pray for judgment against all
26 Defendants as follows:

- 27 1. For unpaid withdrawal liability in the amount of \$47,658.59;
- 28 2. For liquidated damages in amounts as proved;

1 3. For interest at the applicable rate on all amounts due from their respective
2 due dates and thereafter post-judgment;

3 4. For the Trustees' reasonable attorneys' fees and costs of suit incurred, in
4 amounts as proved; and

5 5. For such additional relief as this Court deems just and proper pursuant to
6 section 502(g)(2)(E) of ERISA [29 U.S.C. § 1132(g)(2)(E)].
7

8 Dated: November 7, 2018 LAQUER, URBAN, CLIFFORD & HODGE LLP

9
10 By: /S/ - Susan Graham Lovelace
11 Susan Graham Lovelace, Attorneys for Plaintiff
12 Trustees of the Operating Engineers Pension Trust

13 **WAIVER OF JURY RIGHT**

14 Dated: November 7, 2018 LAQUER, URBAN, CLIFFORD & HODGE LLP

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16 By: /S/ - Susan Graham Lovelace
17 Susan Graham Lovelace, Attorneys for Plaintiff
18 Trustees of the Operating Engineers Pension Trust
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